

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2985 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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KHUSHALBHAI DHANJIBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR SHAKEEL A QURESHI for Petitioners

MR BY MANKAD ADDL PUBLIC PROSECUTOR for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 28/10/1999

ORAL JUDGEMENT

#. Heard Mr.Shakeel Qureshi, learned advocate appearing for the petitioner - original accused and Mr.B.Y.Mankad, learned APP for respondent No.1 State. Respondent No.2 Babubhai Navabhai Vasava though served has opted not to remain present. The original case papers were called for by this Court on 21st October, 1999. The learned APP

Mr.B.Y.mandak had gone through the statement of wife of the complainant recorded by the investigating officer during the course of investigation. The averments made in the complaint as to alleged insult of wife of the complainant made in the complaint are not found in the statement of wife of the complainant. The petitioners have prayed that the proceedings initiated against them under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities ), Act, 1989 [ for short 'the Atrocities Act'] should be terminated. The petitioners have not prayed for termination of the entire criminal proceedings initiated against them. Though the relief claimed in Para 8(B) of the petition pertains to quashing of the entire complaint filed by respondent No.2 but during the course of oral submission, the learned advocate appearing for the petitioners Mr.Qureshi has submitted that the petitioners restrict their relief quashing and setting aside the proceedings initiated under Section 3(1)(10) of the Atrocities Act. Though sub Section (10) of Section 3(1) of the Atrocities Act is mentioned in the FIR, the Court can legitimately frame the charge under Section 3(1)(11) of the Atrocities Act. But I am of the view that looking to the papers of the investigation, none of these two offences was committed by the accused. It is pertinent to note that, prima facie, the ingredients do not disclosed about the commission of above two offences or any of them. It is also important to note that petitioners No.2, 3 & 4 belong to the scheduled tribes and respondent No.2 also belongs to that very tribe. So obviously, the petitioners No.2, 3 & 4 could not have been tried for the offences punishable under Section 3(1)(10) or 3(1)(11). The scheme of the Act cannot be ignored. Exaggeration made by the complainant at the time of lodging of the FIR cannot take place of prima facie evidence or incriminating evidence against the accused when the say of the complainant is not supported by the first and the most important witness viz. the wife of the complainant, so the criminal complaint filed by the respondent No.2 before the Mangrol Police Station of District Surat vide C.R. No : I 43 / 99 for the offence punishable under Section 3(1)(10) initiated by the police is ordered to be quashed and set aside. However, it is clarified that any of the petitioners shall not be tried for the offence punishable under Section 3(1)(11) of the Atrocities Act, 1989. Rule to above extent is made absolute. Direct Service permitted.

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